

U.S. DISTRICT COURT
FIRST CIRCUIT

MOTION TO DENIE[MOTION TO DISMISS]

CIVIL ACTION
NO. 04-10788-MEL
U.S. DISTRICT COURT
FIRST CIRCUIT
MASS.
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CLERK'S OFFICE

In this the Plaintiff in this case petitions this Court to
denie the Defendants Motion to Dismiss.

In this the Plaintiff in this case has a right to file
a Writ of Habeous Coprus to This Court under Rules of Criminal
Proceedure Rule 30 (a), 43 M.G.L.A. Comm. v. Christian 712 N.E.2d
573.

Motion to release from unlawful restraint, like it's Common
Law forebear's of Habeous Corpus & writ of errors, is entitled
to be distinct from ordinary appeal; this is why a motion for
release maybe filed at any time, unlike an ordinary appeal seeking
plenary review of alleged trial errors.

In essence a Writ of Habeous Corus is the immediate release
of a party deprived of his personal freedom, that he must be
released from restraint by a particular respondent named in the
Petition (M.G.L.A. 248 @ 1,&25) Hennessy v. Superintendent of
Framingham 438 N.E.2d 329, Crowley 54 Mass App. Court 447.

In this Habeous Corpus proceeding in Federal Court in a
Civil Action contesting legality of restraint of the Petitioner's
Personal Liberty is the only circumstances are presumed which
demonstrate fundametal unfairness in trial or the infringement
of importAnt Constitutional Rights, that question of Federal
Dimension arising warrenting intrusion into the Province of

a States Criminal Court U.S.C.A. [2254 a (b)]Hudson v. Justice of Wareham District Court 552 F. Supp 974, U.S. ex rel Bailey v. United States Commanding Officer of the Office of the Provost Marshall U.S. Army 496 F.2d 324.

In this case it appears to be a Double Jeopardy Attachment, by this it is a means of making him do his time twice. He has already done the time with Good-Time Credits and such, but now the Department of Corrections is trying to keep the Plaintiff beyond and over his time. Thus raising a Double Jeopardy. By denying him these days they are in a sense making him do his time all over again. Thus causing a Double Jeopardy claim. The Petitioner in this case has done the Programs but, was denied his good-time for the programs as they promised him. Instead have repeatedly denied him good-time credits for work, programs and such. By doing this they have increased his sentence and thus fallen into a Double Jeopardy Claim, by punishing him again for the same crime.

In this he is challenging the Constitutionality of Custody, thus meeting Habeous Corpus jurisdiction requirement 28 USCA §§2254 (a); USCA Constitutional Amendment 5 80 LEd 2d 311. Under Gamble v. Parson

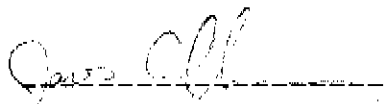
898 F.2d 117, Young v. Lynangh

108 S.Ct 1040 a Petitioner does lack jurisdiction to Consider Habeous due to District Court doesnot lack jurisdiction to Consideration

of the case of conditions of Standard "State of mind issues deliberate indifference, determining whether a prison regulation violate Turner v. Safety. "Reasonable relationship standard" evaluation of the justification to transferring to another State Prison and the Defense of Qualified Immunity.

When a statute or regulation create a liberty interest and when the availability of Post-Deprivation remedies satisfies Due Process claims are often so complex as to require the assistance of Counsel

SIGNED THIS 28 DAY OF JUNE 2004


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